

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-119462-08

Date:

September 16, 2008

LEGEND

X =

State =

A =

B =

C =

Trust1 =

Trust2 =

Date1 =

Date2 =

Date3 =

Date4 =

Dear _____ :

This letter responds to a letter dated April 21, 2008, submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated under the laws of State on Date1 and elected to be treated as an S corporation effective Date2. At that time, A was the sole shareholder of X. On Date3, A transferred shares of X stock to Trust1 and Trust2. B is the sole beneficiary of Trust1, and C is the sole beneficiary of Trust2. X represents that Trust1 and Trust2 qualify to be treated as qualified subchapter S trusts (QSSTs) under § 1361(d). However, the beneficiary of each respective trust failed to make the appropriate election under § 1361(d)(2). Therefore, X's S corporation election terminated on Date3.

X became aware of the failure to file the QSST elections on Date4. X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X represents that from Date2 to the present it has operated as an S corporation. B has reported on his Forms 1040, U.S. Individual Income Tax Return, Trust1's pro rata share of X's income, and C has reported on his Forms 1040 Trust2's pro rata share of X's income. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that, for the purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E, part I, subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(d)(1) provides that, in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of the trust

is treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(2)(A) provides that a beneficiary of a QSST (or his legal representative) may elect to have § 1361(d) apply. Section 1361(d)(2)(D) provides that an election under § 1361(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means a trust, (A) the terms of which require that – (i) during the life of the current income beneficiary, there is only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust terminates on the earlier of the beneficiary’s death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust distributes all of its assets to that beneficiary, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting

in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSIONS

Based on the information submitted and representations made, we conclude that X's S corporation election was terminated under § 1362(d)(2) on Date3 when stock was transferred to ineligible trusts. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date3 and thereafter, provided that X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d), and provided that B and C file QSST elections for Trust1 and Trust2, respectively, with effective dates of Date3 with the appropriate service center within 60 days following the date of this letter. A copy of this letter should be attached to the QSST elections.

During the termination period and thereafter, Trust1 and Trust2 will be treated as QSSTs described in § 1361(d)(3) (assuming the trusts otherwise qualify as QSSTs), and B and C will be treated as the owners of the X stock held by their respective trusts. Accordingly, X's shareholders, in determining their respective income tax liabilities during the termination period and thereafter, must include their pro rata share of the separately stated items of income (including tax-exempt income), loss, deduction, or credit and non-separately computed items of income or loss of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided by § 1368. If X, or any of the shareholders fail to treat X as described above, this ruling shall be void.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether X is otherwise eligible to be treated as an S corporation or whether Trust1 and Trust2 are eligible to be QSSTs under § 1361(d)(3).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a Power of Attorney on file with this office, we are sending a copy of this letter to both of your authorized representatives.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter

A copy for § 6110 purposes

cc: